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Mr. David Ferguson
Pipeline Safety Division
Texas Railroad Commission
William B. Travis Bldg., Room 1-111
Austin, TX 78701

RE: Proposed Amendments to Chapter 18 Underground Pipeline Damage Prevention

Dear Mr. Ferguson:

GTE Southwest Incorporated d/b/a Verizon Southwest (Verizon) provides the following comments on Staff’s proposed amendments to Chapter 18, Underground Pipeline Damage Prevention (Proposed Rules).

1. Commission Jurisdiction

The Utilities Code and the Natural Resources Code address the authority of the Texas Railroad Commission (Commission) with respect to telecommunications service providers (TSPs) and information service providers (ISPs). Although TSPs and ISPs must comply with applicable safety standards, the Commission may not exercise jurisdiction or right-of-way management authority over such providers. Utilities Code § 121.201(d); Natural Resources Code § 117.012(n). Consistent with this limitation, the Proposed Rules do not apply to TSPs and ISPs when acting as facility operators, but only to operators of pipelines containing certain gases and liquids. Rule 18.1(a). The Proposed Rules retain a provision, however, stating that the rules apply to *all* persons excavating in the vicinity of such pipelines. *Id.* This provision would exceed the Commission’s authority concerning TSPs and ISPs, particularly to the extent the Proposed Rules would impose requirements beyond safety standards. Rule 18.1(a) should be revised to reflect the statutory exemption for TSPs and ISPs.

2. Comments on Rule Changes

Verizon recommends that a number of proposed rule changes be modified, as described below.

Rule 18.1(a). This subsection provides that Chapter 18 applies to excavators “engaged in or preparing to engage in the movement of earth in the vicinity of an intrastate underground pipeline” The term “in the vicinity” is vague and undefined. A better

approach would be to mirror Health and Safety Code §756.121(1), which defines “construction” as a structure that is “located on, across, over, or under the easement or right-of-way of a pipeline facility or that physically impacts or creates a risk to a pipeline facility.”

Rule 18.1(d)(2). Currently this rule provides that Chapter 18 does not apply to any excavation that does not exceed 16 inches in depth. The Proposed Rules would revise this provision to state that for hand digging using non-mechanized tools, only excavation that does not exceed 12 inches in depth would be exempted. This change should not be adopted because it would be inconsistent with the definition of “excavate” in Utilities Code § 251.002(5), would impose unnecessary costs on excavators and would not increase pipeline safety.

Rule 18.1(h). The Proposed Rule would make the life of a line locate ticket 14 working days. To make the timeframe clearer for personnel working locate tickets in the field, “14 working days” should be changed to “21 calendar days.”

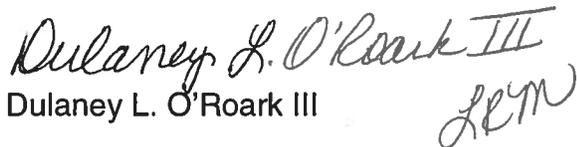
Rule 18.1(l)(1). The Proposed Rules would require a TSP or ISP excavator to “cooperate with the Commission and its authorized representatives in,” among other things, “the administration and enforcement of the provisions of this chapter.” With respect to TSPs and ISPs, this provision would exceed the Commission’s authority by subjecting them to the Commission’s jurisdiction. TSPs and ISPs should be exempted from these requirements.

Rule 18.1(l)(2). The Proposed Rules would require TSPs and ISPs to disclose on request all records that the Commission may reasonably require in its administration and enforcement of Chapter 18. As with proposed Rule 18.1(l)(1), TSPs and ISPs should be exempted from these requirements because they would improperly subject TSPs and ISPs to Commission jurisdiction.

Rule 18.2(5). For clarity, Verizon suggests defining a ticket notice of pipeline damage as a “damage ticket” rather than a “dig-up locate ticket.”

Rule 18.3(h). The Proposed Rules would require an individual locate ticket for every 2,640 feet of proposed construction, which is too short a distance for larger construction projects and would increase administrative costs and reduce efficiency. A more reasonable distance would be 10,560 linear feet, or 2 miles.

Sincerely,


Dulaney L. O'Roark III